

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

RICHARD F. STOKES  
JUDGE

1 THE CIRCLE, SUITE 2  
SUSSEX COUNTY COURTHOUSE  
GEORGETOWN, DE 19947

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Re: *U.S. Department of Agriculture, Farmers Home Administration v.  
Arletha D. Brown*  
C.A. No. 05L-06-020-RFS

Submitted: August 3, 2006  
Decided: August 18, 2006

Dear Counsel:

This is my decision following a bench trial on August 3, 2006 in this mortgage  
foreclosure case.

**Findings of Fact**

(1) Arletha D. Brown, hereafter “the Defendant,” received a loan from the United States  
Department of Agriculture, Farmer’s Home Administration, hereafter “the Plaintiff,” on June 16,  
1982.

(2) On the same date, Defendant signed a promisory note for the loan which was in the  
principal sum of \$38,500 plus interest on the unpaid balance of 13.25% per annum. Payment  
was secured by a mortgage on real property in Seaford, Sussex County, Delaware.

(3) After June 16, 1982, the obligation was re-amortized with subsidies in 1991, 1993, and 1995. Nevertheless, Defendant had problems as early as 1992 in keeping her account current. Action on a foreclosure for problems of this nature began but was then withdrawn on March 24, 1997.

(4) In 1999, the mortgage was again in foreclosure status but the Plaintiff permitted Defendant to cure the default.

(5) The Defendant retained her present counsel in her dealings with Plaintiff concerning the delinquent nature of her account in 1992, 1997, 1999 and thereafter. Defendant's counsel participated in agency hearings with Plaintiff and kept Defendant informed of her legal position with respect to Plaintiff and the status of her debt.

(6) On January 4, 2001, Defendant's counsel was informed by letter from Plaintiff that the sum of \$8,925.80 had to be paid to bring the account current through December of 2000. Defendant's counsel also was advised that Defendant had to pay her scheduled mortgage payment in the amount of \$307.18 before the next regularly scheduled due date of January 13, 2001.

(7) The regularly scheduled payment due date was the 13<sup>th</sup> day of every month. This time was established in a re-amortization agreement signed by Defendant on May 24, 1999. Due to government subsidy assistance, the monthly principal sum of \$689.95 referenced in the agreement was reduced to \$307.18. The agreement stated an outstanding balance of \$54,741.47 as of May 13, 1999. Defendant acknowledged the balance and payment dates by signing the agreement.

(8) The Defendant, through Defendant's counsel, sent Plaintiff a check in the amount of \$8,975.80. Plaintiff credited this sum to Defendant's account on January 16, 2001.

(9) Defendant's counsel and his staff advised Defendant that her next due monthly payment on the 13<sup>th</sup> had to be paid as well for reinstatement of the loan.

(10) On January 17, 2001, Plaintiff credited \$365 to Defendant's account from funds sent by Defendant's counsel.

(11) As a result of these payments, the delinquency was cured, and Defendant's account was reinstated.

(12) When the 1999 foreclosure action was terminated after receipt of the payments referenced in paragraph 8 and 10 above, Plaintiff understood that her next regular payment of \$307.18 was due on February 13, 2001, and each succeeding month thereafter. Her understanding came from a letter by Plaintiff dated January 22, 2001 which advised that all future payments and loan obligations must be timely satisfied. It is shown through Defendant's counsel's actions on her behalf in having the loan reinstated, including a letter of Defendant's counsel dated January 5, 2001 addressed to Plaintiff with a copy to Defendant. Defendant's understanding is further shown by her signing the May 24, 1999 agreement. It is also shown by Plaintiff's typewritten business record memorializing a conversation with Defendant's counsel's staff on January 8, 2001.

(13) On May 22, 2001, Plaintiff credited \$350 to Defendant's account from funds sent by Defendant's counsel.

(14) No payments have been made by Plaintiff after May 22, 2001, and consequently, the mortgage was in default.

(15) Notice of acceleration of the debt and demand for payment and notice of intent to foreclosure was sent by Plaintiff to Defendant and Defendant's counsel on August 6, 2001.

(16) Defendant and Defendant's counsel received the notice, and Defendant was not eligible for further subsidies.

(17) The mortgage foreclosure complaint with demand of payment of the accelerated amounts was filed on June 21, 2005 and served on Defendant on June 30, 2005.

(18) The amounts due as of July 12, 2006 under the mortgage were \$52,344.43 principal, \$37,414.24 interest, \$2,006.96 subsidy recapture, after discounting approximately \$50,000 from subsidies paid on Defendant's behalf by the government over the life of the loan, and \$5,221.34 fee balance for necessary expenses to maintain the property. The total was \$97,046.00 with a per diem interest charge of 19.0017.

### **Conclusions of Law**

(a) The filing and service of the foreclosure satisfied any requirement to provide notice of the acceleration of the mortgage balance. *Wilmington Sav. Fund Soc. FSB v. Meconi*, 1989 WL 24888 (Del. Super.). Defendant had notice by service on June 30, 2005, and I find the more credible evidence shows Defendant had notice beforehand as set forth in paragraphs 15 and 16 above.

(b) Also, after judging the credibility of the witnesses, I find Defendant knew her financial obligations to Plaintiff were in default which triggered this foreclosure, but Defendant did not have the money to pay the debt. Defendant had a limited income from social security disability. Defendant had the benefit of several re-amortizations with subsidies over the life of the loan. Nonetheless, Defendant could not keep the debt current even with substantial

assistance.

Considering the foregoing, judgment is entered against the Defendant *in rem* and *in personam* in the amount of \$97,046.00, with an interest per diem of \$19.0017 from July 12, 2006 until date of satisfaction, representing lawful pre and post judgment interest. Defendant is to pay costs, including \$400 for costs accrued to date. Plaintiff is awarded attorneys fees of \$2,463.50. Upon review of the affidavit submitted by Plaintiff's counsel, the amount awarded is a reasonable fee considering the 18.20 hours of detailed work was necessary in this contested litigation and achieved a favorable result. It is well within the authorized limit permitted by 10 *Del.C. § 3912. See Beneficial Delaware, Inc. v. Waples*, 2006 WL 1880960 (Del. Super.). Moreover, it complies with the ethical considerations under Rule of Professional Conduct 1.5. *See PNC Bank, N.A. v. Jones*, 2002 WL 1748594 (Del. Super.)

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

cc: Prothonotary